

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TIMOTHY SCOTT BUCK,	)	
	)	
Petitioner,	)	
	)	1:13CV591
v.	)	1:10CR430-1
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, submitted a Motion to Vacate, Set Aside, or Correct Sentence (Docket Entry 19) pursuant to 28 U.S.C. § 2255. This Motion cannot be further processed for the following reasons:

1. Motion is not on proper § 2255 form.
2. Petitioner purports to state a timely claim based on “actual innocence,” but appears to state a claim of only legal, not actual, innocence.

Because of these pleading failures, this particular Motion will be dismissed, but without prejudice to Petitioner promptly filing a new motion properly following the 28 U.S.C. § 2255 forms and correcting the defects of the present Motion.<sup>1</sup> To further aid Petitioner, the Clerk is instructed to send Petitioner new § 2255 forms and instructions for filing a § 2255 motion, which Petitioner should follow.

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<sup>1</sup>To the extent there are any issues regarding the running of the statute of limitations in this case, the parties can litigate those issues following any refiling by Petitioner.

IT IS THEREFORE ORDERED that the Clerk is instructed to send Petitioner § 2255 forms and instructions.

IT IS THEREFORE RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Petitioner promptly filing a corrected motion on the proper § 2255 forms.

This, the 25th day of July, 2013.

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/s/ L. Patrick Auld  
**L. Patrick Auld**  
**United States Magistrate Judge**